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In the Supreme Court of the United States

OCTOBER TERM, 1979

LOCAL 1402, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, PETITIONER

v.

F. RAY MARSHALL, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR IN OPPOSITION

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QUESTION PRESENTED

Whether a local union rule requiring that members attend or be excused from attendance at one regular meeting in each of the twelve months prior to nomination, which precludes 93.7% of the local's members from seeking office but serves none of the rule's asserted purposes, is a "reasonable qualification" for election to union office under Section 401(e) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 481(e).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 617 F. 2d 96. The opinion of the district court (Pet. App. 8a-10a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 14, 1980. The petition for a writ of certiorari was filed on July 3, 1980. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT

The Secretary of Labor brought this action under Section 402(b) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 482(b), to set aside the December 1975 election conducted by petitioner, a local labor organization chartered by the International Longshoremen's Association, AFL-CIO. That election was conducted pursuant to petitioner's by-laws, which provide that a member is ineligible for nomination or election to any local office unless he has attended, or has been excused from attending, at least one regular meeting in each of the 12 months before nomination (Pet. 3).[1] To secure an excused absence, a member need only give prior notice to the local that he will not be present; he need not give any reason for his absence (*ibid.*). It is possible, therefore, that a member may satisfy the attendance requirement without ever having been present at a

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[1]During the relevant time period (November 1974 through October 1975) two meetings were held each month except in November and December 1974; all members were automatically credited with attendance for those two months. The case was therefore litigated below with the understanding that members were required to attend or be excused from attending one of the two meetings each month for ten months prior to nominations.

meeting. During the relevant period, however, the attendance requirement precluded 93.7% of petitioner's members from seeking office.

The Secretary of Labor alleged that petitioner's attendance requirement violated Section 401(e) of the Act, 29 U.S.C. 481(e), which requires that "every member in good standing shall be eligible to be a candidate and to hold office (subject * * * to reasonable qualifications uniformly imposed) * * *." The district court entered summary judgment for petitioner, holding that the attendance rule was not unreasonable as a matter of law, because it encouraged attendance at meetings and insured that candidates for office would have at least a minimal interest in union activities (Pet. App. 9a).

The court of appeals reversed, relying on this Court's decision in *Local 3489, United Steelworkers of America* v. *Usery*, 429 U.S. 305 (1977). Because the rule serves purposes that are "weak at best," while disqualifying 93.7% of the local membership and requiring members to decide whether to be candidates ten months before the election, the court of appeals concluded that the "antidemocratic effects of the meeting-attendance rule outweigh the interests urged in its support" (Pet. App. 6a-7a, quoting *Local 3489, Steelworkers* v. *Usery*, *supra*, 429 U.S. at 310).

ARGUMENT

The court of appeals correctly applied this Court's decision in *Steelworkers*. The decision below conflicts with no decision of any other court of appeals and warrants no further review.

1. In *Steelworkers*, this Court considered whether a rule that required attendance at a minimum of 18 monthly meetings over a three-year period, and thereby disqualified approximately 96.5% of the membership, was a

reasonable qualification for local union office under Section 401(e) of the Act, 29 U.S.C. 481(e). The Court noted that the reasonableness of such requirements must "be measured in terms of [their] consistency with the Act's command to unions to conduct 'free and democratic' union elections." *Local 3489, Steelworkers* v. *Usery*, *supra*, 429 U.S. at 309, quoting *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, 499 (1968).

This Court concluded that the *Steelworkers* attendance requirement was not reasonable for three reasons. First, "an attendance requirement that results in the exclusion of 96.5% of the members from candidacy for union office hardly seems to be a 'reasonable qualification' consistent with the goal of free and democratic elections" (429 U.S. at 310). Second, the rule impeded union democracy by requiring members to decide whether to become candidates for union office at least 18 months before the election, when issues may not have crystallized sufficiently to make an informed decision. As the Court noted, a rule requiring a member to decide whether to be a candidate so far in advance of the election "when no issues exist to prompt that decision may * * * discourage candidacies and to that extent impair the general membership's freedom to oust incumbents in favor of new leadership" (429 U.S. at 311). Finally, the Court found that the rule's purported purposes of encouraging attendance and limiting election to candidates who had demonstrated an interest in union activities did not make the requirement reasonable because "the rule has plainly not served these goals" (429 U.S. at 312).

2. The court of appeals correctly found (Pet. App. 4a-6a) that petitioner's attendance rule is indistinguishable from that which this Court struck down in *Steelworkers*. As in *Steelworkers*, petitioner's rule requires that a member decide whether to become a candidate many

months in advance of an election[2] and disqualifies the bulk of the membership—in this case, 93.7%—from seeking union office.[3] As in *Steelworkers*, petitioner's attendance rule purportedly serves the purpose of encouraging attendance and ensuring that candidates have some interest in union activities, but it cannot be justified on that ground. Petitioner's rule obviously has not encouraged attendance at union meetings and, by precluding 93.7% of the membership from seeking union office, it cannot be said to have fostered participation in union affairs. Furthermore, as the court of appeals noted

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[2]As the court of appeals stated (Pet. App. 5a-6a), the principle that union members should not be required to decide far in advance of an election whether they will be candidates applies equally whether that decision must be made 12 months before an election (as the rule here requires), 10 months before an election (as the rule here was applied), or 18 months before the election (as in *Steelworkers*). Furthermore, as the court of appeals also noted (Pet. App. 5a-6a n.4), petitioner's rule may actually be more stringent than that which the Court invalidated in *Steelworkers*. In *Steelworkers*, a member would have had to attend only 13 meetings in the last 18 months if he had attended five meetings in the first 18 months. Under petitioner's rule, a member would be disqualified from seeking local office if he had failed to attend, or secure an excused absence, in only one month during the 10-month period preceding the election.

[3]Contrary to petitioner's contention (Pet. 4-6), the Secretary did not urge, and the court of appeals did not adopt, a *per se* rule requiring the invalidation of a meeting attendance rule whenever the rule bars a large percentage of the membership from seeking office. The fact that 93.7% of petitioner's membership cannot seek union office was one of several factors that the court properly considered in reaching its decision. This Court has looked with disfavor on candidacy eligibility requirements that exclude a large percentage of the membership from seeking office. *Local 3489, Steelworkers* v. *Usery*, *supra*, 429 U.S. at 310; *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, *supra*, 391 U.S. at 502. Moreover, the Secretary's interpretative regulation, treating the percentage of the membership disqualified by an attendance rule as one of several factors to be considered (29 C.F.R. 452.38; Pet. App. 20a), was cited with approval in *Steelworkers* (429 U.S. at 313).

(Pet. App. 4a-5a), the liberal "excuse" provisions of petitioner's rule actually undermine the alleged aims put forth in support of the rule because a member can satisfy the attendance requirement without attending a single meeting.[4]

In sum, petitioner's attendance rule produced the very antidemocratic effects identified in *Steelworkers*, without serving any legitimate purpose. For these reasons, the court of appeals correctly held that this Court's decision in *Steelworkers* was controlling here.[5]

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[4]While compliance with the rule may not be difficult, "this argument misconcieves the evil at which the statute aims." *Local 3489, Steelworkers* v. *Usery*, *supra*, 429 U.S. at 310 n.6. Eligibility rules are not to be judged solely by the burden they place on individual members, but also by their "effect on free and democratic processes of union government." *Id.* at 310-311 n.6.

[5]As the court of appeals correctly noted (Pet. App. 6), petitioner's contention (Pet. 10-11) that the decision below precludes any prediction whether a particular rule is reasonable under Section 401(e) of the Act was rejected by this Court in *Steelworkers*. See 429 U.S. at 314 n.9.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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